



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Pullaro, Terry J.

Serial No.: 09/598,110

Filed: June 21, 2000

For: Sports Training and Conditioning Device

Examiner: Alvin A. Hunter

Group Art Unit: 3711

Commissioner for Patents
Washington, D.C. 20321

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APPLICANTS' BRIEF ON APPEAL

Pursuant to 37 C.F.R. § 1.192, Applicant submits its Brief on Appeal, as follows:

Real Party in Interest (37 C.F.R. § 1.192 (c)(I))

The real party in interest in this appeal is Terry J. Pullaro, a citizen of the State of Missouri.

Related Appeals and Interferences (37 C.F.R. §1.192(c)(2))

There are no other appeals or interferences known to Applicants, or to Applicants' legal representatives or assignees, which will directly affect, or would be directly affected by, or have a bearing on, the Board's decision in this appeal.

Status of the Claims (37 C.F.R. §1.192(c)(3))

Claims 2 – 17 are pending in the application.; these claims stand twice rejected as set forth in the Office Action of May 6, 2002.

Status of Amendments (37 C.F.R. §1.192(c)(4))

No amendments were filed after the rejection of May 6, 2002.

Summary of Invention (37 C.F.R. §1.192(c)(5))

The invention relates to a sports training and conditioning device adaptable to virtually any sport that uses a hand held implement, including baseball, golf, tennis, squash, badminton, hockey, lacrosse, et cetera. The sports training and conditioning device of the present invention comprises a handle (22) shaped like the grip portion of the implement for the particular sport, for example a baseball bat, having a first and second ends (24, 26). A weight (28) is mounted on the second end (26) such that the center of mass is less than about 13 inches from the first end (24). Figs 1 and 2 illustrate the embodiment of the invention adapted for batting sports:

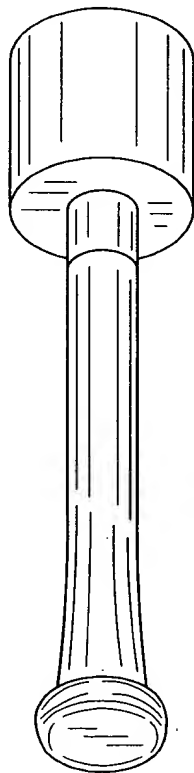


FIG. 1

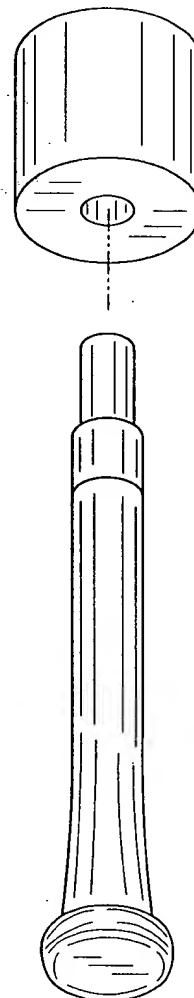


FIG. 2

This positioning of the center of mass so close to the hands defies conventional wisdom of placing a weight on the end of a sports implement. The inventor has found that for most sports, this focuses the effect of the device on the user's forearms, and reduces the stress and strain on other parts of the body. The user simply grasps the device as the user would normally grasp the sports implement, and swings the device in a controlled manner just as the user would swing the implement.

Issues (37 C.F.R. §1.192(c)(6))

Do claims 2 through 7 comply with 35 U.S.C. §112, Second Paragraph?

Is the invention set forth in claims 2, 3, 9 -13, and 17 novel over Lay, U.S. Patent No. 2,884,816?

Is the invention set forth in claims 2, 3, 9 -13, and 17 novel over Stoneburner, U.S. Patent No. 3,930,525?

Is the invention set forth in claims 2-5 and 14-17 novel over Hill, U.S. Patent No. 3,543,715?

Is the invention set forth in claims 2 and 17 novel over Huffman, U.S. Patent No. 5,215,307?

Is the invention set forth in claims 4 - 6 and 14 – 16 non-obvious over Stoneburner, U.S. Patent No. 3,930,525?

Is the invention set forth in claims 4, 5, and 9 – 17 non-obvious over Lay, U.S. Patent No. 2,884,816 in view of Official Notice?

Is the invention set forth in claim 6 non-obvious over Stoneburner, U.S. Patent No. 3,930,525 in view of Wendt, U.S. Patent No. 4,444,396?

Is the invention set forth in claims 9 - 13 non-obvious from Stoneburner, U.S. Patent No. 3,930,525 in view of Wendt, U.S. Patent No. 4,444,396?

Is the invention set forth in claims 2-5 and 7-17 non-obvious over Breuner, U.S. Patent No. 6,138,879?

Is the invention set forth in claim 6 non-obvious over Breuner, U.S. Patent No. 6,138,879 in view of Wendt, U.S. Patent No. 4,444,396?

Is the invention set forth in claims 2 through 17 non-obvious over Hamilton et al., U.S. Patent No. 5,312,308 in view of Hoffman, U.S. Patent No. 5,215,307?

Grouping of Claims (37 C.F.R. §1.192(c)(7))

The claims do not stand together.

Argument (37 C.F.R. §1.192(c)(8))

CLAIMS 2 THROUGH 17 COMPLY WITH 35 U.S.C. §112, SECOND PARAGRAPH

The Office Action states that claims 2, 15, and 17 are indefinite “because it recites the broad recitation ‘handle’, and the claim also recites ‘shaped like a grip portion’ which is the narrower statement of the range/limitation.” Applicant respectfully submits that the claim language is clear and unambiguous: “A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement . . .,” There is no doubt that a person of ordinary skill in the art would understand that the device has a handle, and that handle is shaped like the grip portion of a sports implement (e.g. the grip portion of a bat, tennis racket, golf club, etc.). Defining a handle by what it is shaped like is something that would be readily understood by a person of ordinary skill in the art, see, for example, U.S. Patent No. 5,940,905, which defines a handle by what it is shaped like.

The Office Action further states that “shaped like” is indefinite because it is not clear how similar the handle must be to be considered “shaped like”. Applicant respectfully submits that “shaped like” is sufficiently definite. Determination of infringement is a separate question of fact for a judge or jury, claim interpretation, is a question of law, and applicant respectfully submits that as a matter of interpretation, the language “shaped like” has a clear, readily understood meaning. This requirement has been used in the claims of 838 patents in the past six years, and in U.S. Patent No. 5,940,905 was used to describe the shape of a handle.

Claims 15 and 17 similarly use the language “the device comprising a handle shaped like the grip portion of the implement” and “a device comprising a handle shaped like the grip portion of the implement” respectively. For the same reasons discussed above with respect to claim 2, claims 15 and 17 fully comply with 35 U.S.C. §112, paragraph 2.

For the forgoing reasons, applicant respectfully submits that the rejection of claims 2 through 17 should be reversed.

THE DEVICE SET FORTH IN CLAIMS 2, 3, 9 -13, AND 17
IS NOT ANTICIPATED BY LAY, U.S. PATENT NO. 2,884,816

Claim 2, and thus claims 3 and 9 - 13 which depend directly or indirectly from claim 2, requires:

2. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle.

Lay fails to disclose a handle shaped like a grip portion of a sports implement, as required by claims 2, 3, and 9 – 13. Lay has a handle that is shaped like the handle of a hammer.

Similarly, claim 17 requires:

17. A method of training and conditioning for a sport that uses a hand held implement having a grip portion, the method comprising grasping a device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle, and swinging the device to train and condition the arms.

Lay fails to disclose a handle shaped like a grip portion of a sports implement, as required by claim 17. Lay has a handle that is shaped like the handle of a hammer.

For at least the foregoing reasons, the rejection of claims 2, 3, 9-13 and 17 should be reversed.

THE DEVICE SET FORTH IN CLAIMS 2, 3, 9 -13, AND 17
IS NOT ANTICIPATED BY STONEBURNER, U.S. PATENT NO. 3,930,525

Claim 2, and thus claims 3 and 9 - 13 which depend directly or indirectly from claim 2, requires:

2. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second

ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle.

Stoneburner fails to disclose a handle shaped like a grip portion of a sports implement, as required by claims 2, 3, and 9 – 13. Stoneburner has a handle that is shaped like the handle of a hammer.

Similarly, claim 17 requires:

17. A method of training and conditioning for a sport that uses a hand held implement having a grip portion, the method comprising grasping a device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle, and swinging the device to train and condition the arms.

Stoneburner fails to disclose a handle shaped like a grip portion of a sports implement, as required by claim 17. Stoneburner has a handle that is shaped like the handle of a hammer.

For at least the foregoing reasons, the rejection of claims 2,3, 9-13 and 17 should be reversed.

THE DEVICE SET FORTH IN CLAIMS 2-5 AND 14-17
IS NOT ANTICIPATED BY HILL, U.S. PATENT NO. 3,543,715

Claim 2, and claims 3-5 and 14 which depend directly or indirectly from claim 2, requires:

2. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle.

Hill fails to disclose a handle shaped like a grip portion of a sports implement, as required by claims 2-5 and 14. Hill has a generally cylindrical handle. Similarly, claim 15, and claim 16 which depends from claim 15, requires:

15. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends and being less than about 10 inches long, and a weight on the second end

of the handle, the center of mass of the weight being less than about 13 inches from the first end of the handle.

Hill fails to disclose a handle shaped like a grip portion of a sports implement, as required by claims 15 and 16. Hill has a generally cylindrical handle. Finally, claim 17 requires:

17. A method of training and conditioning for a sport that uses a hand held implement having a grip portion, the method comprising grasping a device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle, and swinging the device to train and condition the arms.

Hill fails to disclose a handle shaped like a grip portion of a sports implement, as required by claim 17. Hill has a generally cylindrical handle.

For at least these reasons, the rejection of claims 2-5 and 14-17 should be reversed.

THE DEVICE SET FORTH IN CLAIMS 2 AND 17
IS NOT ANTICIPATED BY HUFFMAN, U.S. PATENT NO. 5,215,307

Claim 2 requires:

2. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle.

Claim 2 requires a handle shaped like the grip portion of a sports implement. The Huffman device does not have a handle shaped like the grip of a sports implement, but rather has a weight at the butt end of the grip. Furthermore, claim 2 requires a weight on one end of the handle, such that the center of mass is less than 13 inches from the other end of the handle. The Huffman device has weights on both ends.

Similarly, claim 17 requires:

17. A method of training and conditioning for a sport that uses a hand held implement having a grip portion, the method comprising grasping a device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle, and swinging the device to train and condition the arms.

Claim 17 requires a handle shaped like the grip portion of a sports implement. The Huffman device does not have a handle shaped like the grip of a sports implement, but rather has a weight at the butt end of the grip. Furthermore, claim 17 requires a weight on one end of the handle, such that the center of mass is less than 13 inches from the other end of the handle. The Huffman device has weights on both ends.

THE DEVICE SET FORTH IN CLAIMS 4 - 6 and 14 – 16 WOULD NOT HAVE BEEN OBVIOUS FROM STONEBURNER, U.S. PATENT NO. 3,930,525

Claims 4 – 6 and 14 depend directly or indirectly from claim 1, shown above to be allowable over STONEBURNER, and are allowable for the same reasons as claim 1. Furthermore, claim 6 requires that “the device weighs more than the hand held implement used in the sport” The handle of the Stoneburner device is shaped like the handle of a hammer, it is not used in a sport, and it does not appear that the Stoneburner device weighs more than the sporting implement its handle is shaped like. For at least these reasons, the rejection of claims 4-6 and 14 should be reversed.

Claim 15, and claim 16 which depends from claim 15, requires:

15. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends and being less than about 10 inches long, and a weight on the second end of the handle, the center of mass of the weight being less than about 13 inches from the first end of the handle.

Stoneburner fails to disclose a handle shaped like a grip portion of a sports implement, as required by claims 15 and 16. Stoneburner has a handle that is shaped like the handle of a hammer.

For at least these reasons, the rejection of claims 15 and 16 should be reversed.

THE DEVICE SET FORTH IN CLAIMS 4, 5, AND 9 – 17 WOULD NOT HAVE BEEN OBVIOUS FROM LAY, U.S. PATENT NO. 2,884,816 IN VIEW OF OFFICIAL NOTICE

Claims 4, 5, 9 – 14 depend from claim 2, shown above to be allowable over Lay, and are therefore allowable for the same reasons discussed above with respect to claim 2.

Claim 15, and claim 16 which depends from claim 15, requires:

15. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends and being less than about 10 inches long, and a weight on the second end of the handle, the center of mass of the weight being less than about 13 inches from the first end of the handle.

As discussed above, Lay does not disclose a device with a handle shaped like a sports implement. The handle of the Lay device is shaped like a hammer. Claim 16 further requires that “the center of mass of the device is not located on the handle”. This is not shown in Lay.

For at least these reasons, the rejection of claims 15 and 16 should be reversed.

Claim 17 is allowable over Lay for the same reasons discussed above with respect to the §102 rejection of Claim 17. Neither Lay nor the subject matter of OFFICIAL NOTICE teach or make obvious the subject matter of claim 17. For at least this reason, the rejection of claim 17 should be reversed.

THE DEVICE SET FORTH IN CLAIM 6 WOULD NOT HAVE BEEN OBVIOUS FROM STONEBURNER, U.S. PATENT NO. 3,930,525 IN VIEW OF WENDT, U.S. PATENT NO. 4,444,396

Claim 6 depends from claim 2, shown above to be allowable over Stoneburner, and is allowable for the same reasons discussed above with respect to claim 2. Claim 6 further requires: a sport specific training and conditioning device in which “the device weighs more than the hand held implement used in the sport.” This is not shown or suggested in Stoneburner, which is directed to hammer, and would not be obvious from the Stoneburner hammer in view of Wendt.

For at least these reasons, the rejection of claim 6 should be reversed.

THE DEVICE SET FORTH IN CLAIMS 9 - 13 WOULD NOT HAVE BEEN OBVIOUS FROM STONEBURNER, U.S. PATENT NO. 3,930,525 IN VIEW OF WENDT, U.S. PATENT NO. 4,444,396

Claim 9 – 13 depends from claim 2, shown above to be allowable over Stoneburner, and is allowable for the same reasons discussed above with respect to claim 2. Claims 9 – 13 further requires: a sport specific training and conditioning device in which “the device weighs more than the hand held implement used in the sport.” This is not shown or suggested in Stoneburner, which is directed to hammer, and would not be obvious from the Stoneburner hammer in view of Wendt.

Claim 9 further requires that the handle “is shaped like the grip portion of a bat”. Claim 10 further requires that the handle “is shaped like the grip portion of a racket”. Claim 11 further requires that the handle “is shaped like the grip portion of a tennis racket”. Claim 12 further requires that the handle “is shaped like the grip portion of a golf club”. Claim 13 further requires that the handle “is shaped like the grip portion of a hockey stick”.

This is not shown or suggested in Stoneburner, Wendt, and Official Notice.

THE DEVICE SET FORTH IN CLAIMS 2-5 AND 7-17 WOULD NOT HAVE BEEN OBVIOUS FROM BREUNER, U.S. PATENT NO. 6,138,879

Claim 2, and claims 3-5 and 7-14, which depend directly or indirectly from claim 2, require:

2. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle.

Similarly, claim 15, and claim 16 which depends from claim 15, requires:

15. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends and being less than about 10 inches long, and a weight on the second end of the handle, the center of mass of the weight being less than about 13 inches from the first end of the handle.

Similarly, claim 17 requires:.

17. A method of training and conditioning for a sport that uses a hand held implement having a grip portion, the method comprising grasping a device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle, and swinging the device to train and condition the arms.

THE DEVICE SET FORTH IN CLAIM 6 WOULD NOT HAVE BEEN OBVIOUS FROM BREUNER, U.S. PATENT NO. 6,138,879 IN VIEW OF WENDT, U.S. PATENT NO. 4,444,396

Claim 6 depends from claim 2, shown above to be allowable over Breuner and over Wendt, and claim 6 is therefore allowable for the same reasons discussed above with respect to claim 2. Neither Bruener nor Wendt show a device that has a handle shaped like the grip of a sports implement. Claim 6 further requires that the device weighs more than the hand held implement used in the sport. The Office Action states that Wendt shows a device heavier than a golf club, but this does not teach device in which a weight, heavier than the normal sports implement, is concentrated less than 13 inches from the users hands. This has a significantly different biomechanical effect on the user, and is not simply to strength the muscles used in a swing, but to strengthen particular muscles in the user's forearms.

THE DEVICE SET FORTH IN CLAIMS 2 THROUGH 17 WOULD NOT HAVE BEEN OBVIOUS FROM HAMILTON ET AL., U.S. PATENT NO. 5,312,308 IN VIEW OF HUOFFMAN, U.S. PATENT NO. 5,215,307

Claim 2, and claims 3-14 which depend from claim 2, require:

2. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle.

Claims 2-14 require a device with a handle "shaped like the grip portion of the implement". No embodiment of Hamilton et al. has a handle "shaped like the grip portion of the implement." Every embodiment of the Hoffman et al. device has a weight

on both ends of the device, and thus in no embodiment is the handle truly "shaped like the grip portion of the implement."

Claim 3 further requires that the center of mass of the device "is less than about 13 inches from the first end of the handle, but past the graspable portion of the handle". Hamilton does not show or suggest a device with a handle shaped like the grip portion of a sports implement with this weight distribution. It is apparent that the center of mass of the Hoffman et al device would not be past the graspable portion of the handle as required by claim 3.

Claim 9 requires that the handle "is shaped like the grip portion of a bat"; claim 10 requires that the handle "is shaped like the grip portion of a racket" claim 11 requires that the handle is "shaped like the grip portion of a tennis racket"; claim 12 requires that the handle "is shaped like the grip portion of a golf club; claim 13 requires that the handle "is shaped like the grip portion of a hockey stick." These are not shown in either Hamilton et al. or Huffman et al.

Similar to claim 2, claim 15, and thus claim 16 which depends from claim 15, requires "a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement". Neither Hamilton et al. or Huffman et al. disclose a device in which the hand is shaped like the grip portion of the implement. This is clearly absent from Hamilton, and every embodiment of Huffman has weights on both ends, like a dumbbell, rather than a handle shaped like the grip portion of a sports implement.

Claim 16 further requires that the center of mass of the device is not located on the handle. Hamilton does not show or suggest a device with a handle shaped like the grip portion of a sports implement with this weight distribution. It is apparent that the center of mass of the Hoffman et al device would not be past the graspable portion of the handle as required by claim 3., this is not taught by Hamilton et al. or Hoffman et al.

Similar to claims 1 and 15, claim 17 requires grasping "a device comprising a handle shaped like the grip portion of the implement" Neither Hamilton et al. or Huffman et al. disclose a device in which the hand is shaped like the grip portion of the implement. This is clearly absent from Hamilton, and every embodiment of Huffman

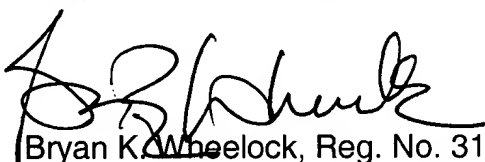
has weights on both ends, like a dumbbell, rather than a handle shaped like the grip portion of a sports implement.

For at least this reason, applicant respectfully submits that the rejection of claims 2 - 17 should be reversed.

CONCLUSION

Applicant has invented a sports training and conditioning device which emulates the hand held implement used in a particular sport, such as a club, bat, racket, or stick, and contrary to conventional wisdom positioned the weight so that it is no more than about 13 inches from the end of the device. This means that no matter where the user grips the device, the weight is still so close to the user's hands that the weight is supported by the forearms as the user swings the device. This is not shown or suggested in the prior art, and for this reason, applicant respectfully submits that the rejection of claims 2 through 17 should be reversed.

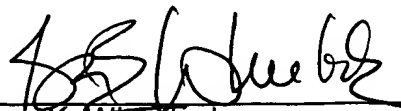
Respectfully submitted,



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CERTIFICATE OF MAILING

I certify that on January 7, 2003, APPLICANTS' BRIEF ON APPEAL (in triplicate) was sent by first mail to the U.S. Patent and Trademark Office, address to Commissioner for Patents, U.S. Patent and Trademark Office, Washington, D.C. 20231.



Bryan K. Wheelock
Reg. No. 31,441

APPENDIX 1
(CLAIMS ON APPEAL)

2. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle.

3. The sport specific training and conditioning device according to claim 2 wherein the center of mass of the device is less than about 13 inches from the first end of the handle, but past the graspable portion of the handle.

4. The sport specific training and conditioning device according to claim 2 wherein the weight has a diameter of less than about 4 inches.

5. The sport specific training and conditioning device according to claim 2 wherein the weight has a length of less than about 4 inches.

6. The sport specific training and conditioning device according to claim 2 wherein the device weighs more than the hand held implement used in the sport.

7. The sport specific training and conditioning device according to claim 2 wherein one of the handle and weight includes an externally threaded portion, and wherein the other of the handle and weight includes an internally threaded socket.

8. The sport-specific training and conditioning device according to claim 7 wherein the handle includes an externally threaded portion and the weight includes an internally threaded socket.

9. The sport specific training and conditioning device according to claim 2 wherein the handle is shaped like the grip portion of a bat.

10. The sport specific training and conditioning device according to claim 2 wherein the handle is shaped like the grip portion of a racket.

11. The sport-specific training and conditioning device according to claim 10 wherein the grip is shaped like the grip portion of a tennis racket.

12. The sport specific training and conditioning device according to claim 2 wherein the handle is shaped like the grip portion of a golf club.

13. The sport specific training and conditioning device according to claim 2 wherein the handle is shaped like the grip portion of a hockey stick.

14. The sport specific training and conditioning device according to claim 2 wherein the handle is less than about 10 inches long.

15. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends and being less than about 10 inches long, and a weight on the second end of the handle, the center of mass of the weight being less than about 13 inches from the first end of the handle.

16. The sport specific training and conditioning device according to claim 15 wherein the center of mass of the device is not located on the handle.

17. A method of training and conditioning for a sport that uses a hand held implement having a grip portion, the method comprising grasping a device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle, and swinging the device to train and condition the arms.